

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of SANTANA PELESS and  
SIENNA PELESS, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JARROD PELESS,

Respondent-Appellant,

and

FALLON GROSSMAN,

Respondent.

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UNPUBLISHED

October 1, 2009

No. 290736

Kent Circuit Court

Family Division

LC Nos. 06-054766-NA;

06-054767-NA

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Respondent Jarrod Peless appeals as of right from the trial court's order terminating his parental rights pursuant to MCL 712A.19b(3)(c)(ii) and (g). For the reasons set forth in this opinion, we affirm. This case is being decided without oral argument under MCR 7.214(E).

Respondent argues that the trial court erred in finding that the statutory grounds for termination were proven by clear and convincing evidence. Where termination is sought on the basis of circumstances new or different from those that led to the trial court's jurisdiction over the children, legally admissible evidence is required to establish the statutory ground for termination. MCR 3.977(F)(1)(b). We review the trial court's findings for clear error. MCR 3.977(J); *In re JK*, 468 Mich 202, 209; 661 NW2d 216 (2003).

The trial court did not clearly err in finding that § 19b(3)(c)(ii) was established by clear and convincing evidence. The evidence showed that respondent had a reasonable opportunity to rectify the conditions identified in a parent-agency agreement, which included goals concerning housing, substance abuse, and other matters. Because respondent did not have custody of the children, his parental fitness could only be judged in other ways. See *In re Sours*, 459 Mich 624, 638; 593 NW2d 520 (1999). The evidence concerning respondent's failure to resolve his

substance abuse problem alone supports the trial court's decision to terminate his parental rights under § 19b(3)(c)(ii). A respondent must not only go through the motions of complying with a treatment plan, but must benefit from services sufficient for the court to conclude that he is able to provide a home where the children would no longer be at risk of harm. *In re Gazella*, 264 Mich App 668, 676-677; 692 NW2d 708 (2005).

Throughout the case, there was evidence of respondent's noncompliance with requirements of his parent-agency agreement, including testing positive for cocaine. Although a caseworker testified that she misidentified the hair follicle sample taken from respondent on December 27, 2007, as a chest hair rather than head hair, this mistake did not render Thomas Cairns's expert testimony that the sample tested positive for cocaine inadmissible. To the extent that respondent asks this Court to reevaluate the weight and credibility of this evidence, we decline to do so. Deference is given to the trial court's special opportunity to judge the weight of evidence and the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

And while the reasonableness of services offered to a respondent has a bearing on the sufficiency of the evidence to establish a statutory ground for termination, *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005), we find no support for respondent's claim that the requirement that he call in daily to determine if he needed to provide a urine screen was unduly onerous. Rather, the evidence showed that respondent did not cooperate with the caseworker by calling in daily, despite being informed that he should provide verification of any difficulty in complying with this requirement, and that his failure to call in would be treated as a positive test. The call-in procedure was initiated after respondent was arrested for disorderly conduct while intoxicated. Respondent was previously diagnosed as having alcohol and drug dependencies as part of a psychological evaluation, and both the psychologist who prepared the evaluation and a caseworker testified regarding respondent's lack of insight into the effect of substance abuse on his ability to parent.

Considering the evidence as a whole, and giving appropriate deference to the trial court's findings, we find no clear err in the trial court's determination that respondent failed to resolve his substance abuse problem, and that there was no reasonable likelihood that this condition would be rectified within a reasonable time considering the children's ages. MCL 712A.19b(3)(c)(ii). The evidence regarding respondent's substance abuse also supports the trial court's finding that § 19b(3)(g) was proven by clear and convincing evidence.

Accordingly, we affirm the trial court's decision terminating respondent's parental rights.

Affirmed.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Stephen L. Borrello